



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 8, 1992

Mr. Charles E. Griffith, III  
Deputy City Attorney  
P. O. Box 1088  
Austin, Texas 78767-8828

OR92-324

Dear Mr. Griffith:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 14940.

The Austin Police Department (the department) received an open records request from a criminal defendant whose case is presently on appeal in federal court for "records that your office has maintained under my name and/or identifier assigned to my name," specifically those records held by the Theft, Repeat Offender Program, and Joint Governmental Operations units of the department. A representative of the United States Department of Justice has requested, apparently as a result of the open records request, that the department not allow the "disclosure of records of any kind" relating to the requestor/defendant. You have submitted to this office for review a variety of the department's incident reports, arrest records, and investigatory materials that relate to the requestor as either a victim of, witness to, or suspect in criminal activities in Austin over the past ten years. You contend that the requested records come under the protection of sections 3(a)(3) or 3(a)(8) of the Open Records Act.

Section 3(a)(3) of the Open Records Act, known as the litigation exception, excepts from required public disclosure:

information relating to litigation of a criminal or civil nature and settlement negotiations, *to which the state or a political subdivision is, or may be, a party*, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has

determined should be withheld from public inspection.  
[Emphasis added.]

You contend that the department may withhold the requested records pursuant to section 3(a)(3) because the requested material "concerns" the pending criminal prosecution of federal law. To secure the protection of section 3(a)(3), however, a governmental body must first demonstrate that a judicial or quasi-judicial proceeding *to which it is a party* is pending or reasonably anticipated. *See, e.g.*, Open Records Decision Nos. 575 (1990); 452 (1986); 360 (1983). Unless a governmental body is a party to litigation to which requested records relate, it may not claim the protection of section 3(a)(3). Open Record Decision Nos. 392 (1983); 132 (1976). You have not indicated that the city or the State of Texas is or anticipates becoming a party to the criminal prosecution of the requestor. Consequently, in this instance section 3(a)(3) is inapplicable.

Section 3(a)(8) protects from required public disclosure information the release of which would unduly interfere with the detection, prosecution, or prevention of crime. Open Records Decision Nos. 434 (1986); 287 (1981). None of the criminal files submitted to this office appear to be active. After a criminal investigation file has been closed, either by prosecution or by administrative decision, the availability of section 3(a)(8) is greatly restricted, and the governmental body must demonstrate how the release of particular documents would likely unduly interfere with law enforcement efforts. Open Records Decision No. 434 (1986).

You have made no argument that the release of the requested records would in any way interfere with the department's law enforcement efforts. Although you contend that a section 3(a)(8) claim is implicit in the statement from the Department of Justice that "this case is still pending," we interpret the quoted language as referring to the appeal of the requestor's criminal conviction, not to any ongoing federal investigation. Absent a showing of such an investigation, *see* Open Records Decision No. 340 (1982), we conclude that no section 3(a)(8) interest has been demonstrated in this instance. Accordingly, the requested records must be released in their entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with

a published open records decision. If you have questions about this ruling, please refer to OR92-324.

Yours very truly,

A handwritten signature in cursive script that reads "Susan Garrison".

Susan Garrison  
Assistant Attorney General  
Opinion Committee

SG/RWP/lmm

Ref.: ID# 14940  
ID# 14979

cc: Mr. Frank Ivy  
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